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IN THE MATTER OF THE COMPLAINT OF  
ESCHELON TELECOM OF ARIZONA, INC.  
AGAINST QWEST CORPORATION

DOCKET NO. T-01051B-06-0257  
T-03406A-06-0257

QWEST'S CORPORATION'S  
ANSWER TO ESCHELON'S  
COMPLAINT

Eschelon Telecom of Arizona, Inc. ("Eschelon") claims its customers have been placed out of service because of Qwest Corporation's ("Qwest") failure to expedite orders for unbundled loops. In reality, Eschelon's customers have found themselves out of service because of Eschelon's intractability and incompetence. Moreover, to bring this Complaint, Eschelon cherry-picked the named customer in hopes of (1) portraying Qwest as an unreasonable, heartless corporate citizen, and (2) contaminating the parties' upcoming arbitration in a way that harms Qwest and favors Eschelon. The Arizona Corporation Commission ("Commission") should dismiss the Complaint in all respects.

**I. INTRODUCTION**

Like many CLECs in Arizona in the late 1990s, Eschelon opted into the AT&T interconnection agreement ("ICA"). That ICA states that the parties "*shall mutually develop*

1 *expedite procedures* to be followed” when a CLEC “determines an expedite is required to meet  
2 subscriber service needs.” ICA at Att. 5, §3.2.2.12 (emphasis added). The ICA does not define an  
3 expedite process; it simply says one must be “mutually” developed.

4 From February 2004 through July 2005, Qwest and the competitive LECs operating in its  
5 14-state region (including Eschelon) developed a process for expediting orders for unbundled  
6 loops in the Commission-approved Change Management Process. Since July 2005, hundreds of  
7 CLECs have opted into the “expedite process” and have had the ability to obtain expedited orders  
8 for unbundled loops. Only one CLEC in Qwest’s entire 14-state region has doggedly refused to  
9 adhere to the new process – Eschelon. Eschelon knows about the new process; knows how the  
10 new process works; knows it has not opted into the new process; knows its failure to opt into the  
11 new process makes it ineligible for expedites; and knows its failure to opt into the new process puts  
12 its own customers at risk. Despite this knowledge, Eschelon refuses to opt into the new process  
13 because it does not want to pay Qwest a reasonable fee (\$200 per day) to expedite an order. In  
14 other words, Eschelon has knowingly placed its own customers at risk because it wants to obtain  
15 expedites for free.

16 The consequences of Eschelon's heel-dragging finally came to a head in March 2006 –  
17 eight months after the industry finalized the new expedite process through the Commission-  
18 approved Change Management Process. Eschelon directed Qwest to disconnect a DS1 Capable  
19 Loop serving a customer in the East Valley serving individuals with disabilities. After receiving  
20 Eschelon's disconnect order, Qwest sent Eschelon multiple advance notices (as is the norm) before  
21 disconnecting the DS1 Capable Loop, notices that Eschelon apparently ignored. On March 15,  
22 2006, Qwest disconnected the loop per Eschelon’s request. Even though the cause of the  
23 disconnect was Eschelon’s incompetence and lack of due care, Eschelon began a finger pointing  
24 campaign towards Qwest.

25 Unfortunately for the customer and for Qwest, Eschelon’s incompetence did not begin and  
26 end with Eschelon’s disconnect order; indeed, Eschelon continued to compound the problem.

1 First, Eschelon submitted a repair ticket to Qwest knowing there was no circuit to be repaired; it  
2 had been disconnected at Eschelon's own request. Second, on Friday, March 17, 2006, Eschelon  
3 submitted an order for a new DS1 Capable Loop (an unbundled loop available to CLECs), but  
4 failed to check the box on the Local Service Request ("LSR") to expedite the order. Third,  
5 Eschelon escalated the March 17 order and asked that it be expedited and service delivered on  
6 Monday, March 20, 2006. Qwest's account team immediately reminded Eschelon it was ineligible  
7 for expedited orders because it had refused to opt into the expedite process developed in the  
8 Commission-approved Change Management Process. Rather than simply opt into the process  
9 (which could have been completed in a matter of moments), Eschelon put its customer's needs to  
10 the side and again refused to accept the expedite process. Instead, Eschelon ordered a tariffed  
11 circuit (a "retail" loop), and Qwest expedited the order (using the exact same process for the retail  
12 loop that Eschelon refuses to accept for its wholesale purchases), and delivered the circuit on  
13 March 20, 2006. Thus, Qwest delivered service to Eschelon on the very day Eschelon asked  
14 Qwest to deliver the unbundled loop. Despite these facts, Eschelon falsely claims that Qwest's  
15 conduct caused its customer to be out of service for an extended period. Qwest eagerly awaits an  
16 opportunity to present these facts to the Commission.

## 17 18 **II. QWEST'S RESPONSES TO ESCHELON'S SPECIFIC ALLEGATIONS**

19  
20 Qwest hereby responds to each of Eschelon's specific allegations. To the extent Qwest  
21 does not admit a specific allegation or portion of an allegation, any aspect of the allegation not  
22 specifically admitted should be deemed denied.

### 23 **A. The Parties**

24 1. Qwest admits that Eschelon is a Minnesota corporation registered to do business in  
25 the state of Arizona. Qwest also does not dispute that Eschelon is certified to provide local  
26 exchange service in Arizona.

1           2.       Qwest denies that Eschelon is a “facilities based competitive local exchange  
2 provider.” While Eschelon does own its own switch, it takes much more to be a true facilities-  
3 based provider.

4           3.       Qwest admits that it is a Colorado corporation with offices and operations in  
5 Arizona. Qwest admits that it is an incumbent local exchange provider (“ILEC”) within the  
6 meaning of section 251(h) of the Telecommunications Act of 1996. Qwest also admits that it  
7 provides local exchange, exchange access and interexchange services to customers in Arizona.  
8 Qwest denies that it is a monopoly provider of local exchange services in Arizona, as there is  
9 substantial competition for these services in Arizona.

10 **B.     Jurisdiction**

11           4.       Qwest admits that the Commission has jurisdiction over this Complaint.

12 **C.     At All Times, Qwest Abided by the Terms of the Parties’ ICA.**

13           5.       Qwest admits that the Qwest-Eschelon ICA is the original ICA negotiated (in  
14 part) and arbitrated (in part) by Qwest (then U S WEST) and AT&T following passage of the  
15 Act. Qwest also admits that Eschelon opted into the AT&T ICA, which the Commission  
16 approved on or about April 28, 2000.

17           6.       Qwest emphatically denies this allegation (as well as those in paragraphs 7-8).  
18 Rather than quote the pertinent contractual provisions, Eschelon misrepresents the terms of the  
19 ICA. Here is what the ICA actually states:

20                   A.     The parties that opt into the AT&T agreement “*shall mutually develop*  
21 *expedite procedures* to be followed” when CLEC “determines an expedite is required to meet  
22 subscriber service needs.” ICA at Att. 5, §3.2.2.12 (emphasis added). Qwest and the industry  
23 developed methods to expedite orders for unbundled loops in the Commission-approved Change  
24 Management Process. Although the expedite process has been developed, Eschelon refuses to  
25 adhere to it.

26                   B.     The ICA also states that Qwest “shall provide” CLEC with the capability

1 to request an expedited due date on a service order. ICA at Att. 5, §3.2.2.13. Qwest did provide  
2 Eschelon with the capability to request expedite orders for unbundled loops; however, Eschelon  
3 made a conscious decision that it would not opt into the process developed in the Commission-  
4 approved Change Management Process. Moreover:

5 1. The ICA makes plain that Qwest does not need to expedite service orders  
6 simply because Eschelon requests an expedite. The Eschelon ICA states that  
7 “[w]ithin two (2) business hours after a request from [Eschelon] for an expedited  
8 order, [Qwest] shall notify” Eschelon whether it will complete the order on an  
9 expedited interval. ICA at Att. 5, §3.2.2.13. Here, Qwest immediately informed  
10 Eschelon that it would not expedite the order thereby fulfilling its contractual  
11 obligations.

12 2. Other provisions of the ICA amplify that Qwest is not obligated to  
13 expedite orders. Specifically, the ICA states that if Eschelon submits an order  
14 that requests an expedited due date, “and [Qwest] agrees to” the new due date,  
15 then that expedited date is the new due date. ICA at Att. 5, §3.2.4.3.1. Here, the  
16 order submitted by Eschelon did not request an expedited due date. Eschelon  
17 failed to check the box on the LSR identifying the order as one requesting an  
18 expedited due date.

19 3. The ICA also gives Eschelon the right to request an expedited due date  
20 after submission of the order; again, the expedited date is not applicable unless  
21 Qwest “agrees to meet that new/revised due date....” ICA at Att. 5, §3.2.4.4.  
22 Here, Qwest immediately informed Eschelon that it would not expedite the order  
23 thereby fulfilling its contractual obligations.

24 C. The expedite process created in the Commission-approved Change  
25 Management Process requires Qwest to expedite an order for an unbundled loop simply because  
26 a CLEC requests an expedited due date. Despite this benefit, Eschelon refused to opt into the

1 process because it wants to obtain expedites for free.

2 D. Qwest admits that the ICA contains provisions on repair. However, Qwest  
3 avers that these provisions have no applicability to the case at bar because Eschelon instructed  
4 Qwest to disconnect the customer's circuit. Once the disconnection occurred, there was no  
5 circuit to repair. The only option available to Eschelon and Qwest was for Eschelon to order a  
6 new circuit.

7 E. Qwest admits that the ICA reads: "[Qwest] shall conduct all activities and  
8 interfaces which are provided for under this Agreement with [Eschelon's] Customers in a carrier-  
9 neutral, nondiscriminatory manner." ICA at §31.1.

10 7. Eschelon appears to have invented the allegations in Paragraph 7 out of whole  
11 cloth. The ICA provisions that Eschelon cites in its Complaint are as follows:

12 A. Attachment 1, concerning "Rates and Charges" contains a provision which  
13 reads:

14  
15 Except as otherwise specified in this Agreement, as approved or  
16 ordered by the Commission, or as agreed to by the Parties through  
17 good faith negotiations, nothing in this Agreement shall prevent a  
18 Party through the dispute resolution process described in this  
19 Agreement from seeking to recover the costs and expenses, if any, it  
20 may incur in (a) complying with and implementing its obligations  
21 under this Agreement, the Act, and the rules, regulations and orders  
22 of the FCC and the Commission, and (b) the development,  
23 modification, technical installation and maintenance of any systems  
24 or other infrastructure which it requires to comply with and to  
25 continue complying with its responsibilities and obligations under  
26 this Agreement.

ICA at Att. 1, §1.2. This provision does not in any way concern service disruption.

23 B. Section 4.1.18 of Attachment 5 is entitled "Bill Reconciliation" and  
24 defines a process for "[e]ach Party ... to notify the other Party upon the discovery of a billing  
25 discrepancy." This provision also does not mention "service interruption" and only applies upon  
26 receipt of a bill. Thus, this provision has no applicability to the dispute in this case.

1           8.       Qwest denies this paragraph as written. Qwest admits that it previously expedited  
2 orders for unbundled loops on an expedited basis for Eschelon pursuant to the expedite process  
3 then in effect, as approved in the Change Management Process. Qwest avers that the Commission-  
4 approved Change Management Process is recognized by the industry as the vehicle by which  
5 processes that underlie interconnection agreements are created and modified. Eschelon's active  
6 participation in the CMP, and its course of conduct and dealings generally, bind Eschelon to the  
7 processes created in CMP. The former expedite process approved by the CMP did not have rates  
8 associated with expediting orders for unbundled loops. The expedite process adopted in the  
9 Commission-approved CMP process in July 2005 contained a rate of \$200 per day. Such a  
10 payment is fully consistent with the ICA, which states that when Eschelon "requests a due date  
11 earlier than the standard due date interval, then expedite charges may apply." ICA at Att. 5,  
12 §3.2.4.2.1. Thus, the ICA specifically contemplates that Eschelon will pay a fee to expedite  
13 orders for unbundled loops. This contractual provision is inconsistent with Eschelon's position  
14 that it should obtain expedites for free.

15           9.       Qwest admits that the Commission-approved CMP does not allow Qwest to  
16 change processes, systems or the Product Catalog (PCAT) unilaterally. To modify a system,  
17 process or the PCAT, Qwest must utilize the Commission-approved CMP.

18           10.      Qwest denies this allegation as inconsistent and inappropriate. Eschelon claims  
19 that the CMP is not part of the parties' ICA because it is not attached to the ICA, but claims the  
20 outdated expedite process is part of the parties' ICA even though it is not attached to the ICA.  
21 Eschelon's ICA – which it admits is the AT&T ICA – specifically contemplates that the parties  
22 will work together to create certain processes including the expedite process. Eschelon admits  
23 that the method available for making modifications to such processes is the Commission-  
24 approved CMP. Thus, modification of processes – including the expedite process – was  
25 specifically contemplated in the parties' ICA. Moreover, Eschelon's active participation in the  
26 CMP, and its course of conduct and dealings generally, bind Eschelon to the processes created in

1 CMP.

2 11. Qwest denies this allegation. The parties' ICA does not give Eschelon the "right"  
3 to obtain orders for unbundled loops on an expedited basis. As mentioned above, the language  
4 of the ICA specifically gives Qwest the right to reject requests for expedited due dates. If  
5 Eschelon opted into the expedite process approved in CMP, Eschelon would have the "right" to  
6 obtain expedited orders.

7 A. Qwest denies this allegation as written as being inconsistent with the  
8 parties' course of conduct and dealings. Since the AT&T ICA was first executed in 1997, the  
9 telecommunications industry has gone through a radical transformation. Specifically, Qwest  
10 went through two Operational Support System tests and received approval from all 14-state  
11 commissions and the FCC for having established methods and procedures for provisioning  
12 UNEs, (including unbundled loops) that provide CLECs with a meaningful opportunity to  
13 compete. These processes and procedures were not mentioned in the AT&T ICA. However, the  
14 parties have used those very methods and processes, and most importantly the Commission-  
15 approved Change Management Process, for years now, and, therefore, methods and processes  
16 developed in the Commission-approved Change Management Process underlie the parties' ICA.  
17 Moreover, Eschelon routinely participates in the Commission-approved CMP – indeed, Eschelon  
18 is the most active and vocal participant in CMP. Eschelon's participation in the CMP constitutes  
19 acceptance of the CMP and its methods and processes.

20 B. Eschelon cites two provisions from Qwest's Arizona SGAT to support its  
21 contention that it is not bound by the terms of the Product Catalog (PCAT). This is an example  
22 of Eschelon looking outside of the terms of the ICA to define the parties' relationship. Qwest  
23 denies that these provisions mean that Eschelon is not bound to processes approved in the  
24 Commission-approved CMP because Eschelon has recognized through its course of conduct and  
25 dealings that the purpose of the CMP is to create and/or modify processes that Qwest will use to  
26 provision various services, such as unbundled loops.



1 C. Qwest admits that Exhibit G to the SGAT contains the following  
2 language:

3 In cases of conflict between the changes implemented through the  
4 CMP and any CLEC interconnection agreement (whether based on  
5 the Qwest SGAT or not), the rates, terms and conditions of such  
6 interconnection agreement shall prevail as between Qwest and the  
7 CLEC party to such interconnection agreement. In addition, if  
8 changes implemented through the CMP do not necessarily present  
9 a direct conflict with a CLEC interconnection agreement, but  
10 would abridge or expand the rights of a party to such agreement,  
11 the rates, terms and conditions of such interconnection agreement  
12 shall prevail as between Qwest and the CLEC party to such  
13 agreement.

14 Arizona SGAT Exhibit G, §1. As shown above, there is nothing inconsistent between the  
15 parties' ICA and the expedite process adopted in the Commission-approved CMP.

16 D. Eschelon cites another provision from Qwest's Arizona SGAT, which  
17 reads:

18 2.3 Unless otherwise specifically determined by the  
19 Commission, in cases of conflict between the SGAT and Qwest's  
20 Tariffs, PCAT, methods and procedures, technical publications,  
21 policies, product notifications or other Qwest documentation  
22 relating to Qwest's or CLEC's rights or obligations under this  
23 SGAT, then the rates, terms and conditions of this SGAT shall  
24 prevail. To the extent another document abridges or expands the  
25 rights or obligations of either Party under this Agreement, the  
26 rates, terms and conditions of this Agreement shall prevail.

27 This is another example of Eschelon looking outside of the terms of the ICA to define the  
28 parties' relationship. Again, as shown above, there is nothing inconsistent between the ICA and  
29 the expedite process adopted in the Commission-approved CMP.

30 12-13. Qwest denies that the expedite process adopted in the Commission-approved  
31 CMP modified the ICA in any way. As shown above, there is nothing inconsistent between the  
32 ICA and the expedite process adopted in the Commission-approved CMP.

33 14. Qwest denies this allegation as written. Qwest admits that it previously expedited  
34 orders for unbundled loops on an expedited basis for Eschelon pursuant to the expedite process  
35 then in effect, which process was also created in the Commission-approved Change Management

1 Process. Qwest avers that the Commission-approved Change Management Process is recognized  
2 by the industry as the vehicle by which processes that underlie interconnection agreements are  
3 created and modified. Eschelon's active participation in the CMP, and its course of conduct and  
4 dealings generally, bind Eschelon to the processes created in CMP. The former expedite process  
5 approved by the CMP did not have rates associated with expediting orders for unbundled loops.  
6 The expedite process adopted in the Commission-approved CMP process in July 2005 contained a  
7 rate of \$200 per day. Such a payment is fully consistent with the ICA, which states that when  
8 Eschelon "requests a due date earlier than the standard due date interval, then expedite charges  
9 may apply." ICA at Att. 5, §3.2.4.2.1. Thus, the ICA specifically contemplates that Eschelon  
10 will pay a fee to expedite orders for unbundled loops. This contractual provision is inconsistent  
11 with Eschelon's position that it should obtain expedites for free.

12           A. Qwest admits that it worked with the industry in the Commission-  
13 approved CMP for 18 months on a process for expediting orders for unbundled loops. The key  
14 provision of the expedite process for unbundled loops adopted in the Commission-approved  
15 CMP is that a CLEC can demand that an order be expedited, and Qwest must expedite the order  
16 to the extent resources are available. The old expedite process left it to Qwest's discretion to  
17 determine whether an expedited due date was warranted. Despite this tremendous benefit,  
18 Eschelon objected to the process because it wants expedites for free, even though its own ICA  
19 contemplates payments to Qwest for expedites.

20           B. Qwest gave Eschelon months and months to act on the new expedite  
21 process adopted in the Commission-approved CMP. Qwest worked on the process with the  
22 industry in CMP for 18 months – from February 2004 to July 2005. Qwest then gave the  
23 industry – including Eschelon – until January 2006 to prepare for the new process. As Eschelon  
24 admits, Qwest sent notices to Eschelon describing the new process. All the while, hundreds of  
25 CLECs opted into and began to utilize the expedite process; however, Eschelon did nothing.  
26 Eschelon could have challenged the provision before the Commission using the "Dispute

1 Resolution” process specifically contemplated by the Commission-approved CMP. Eschelon  
2 chose not to do so. Eschelon could have followed the “Exception” process specifically  
3 contemplated by the Commission-approved CMP to challenge the expedite process. Again,  
4 Eschelon chose not to do so. Instead, Eschelon continued to submit expedite orders concerning a  
5 number of different customers – twelve of which preceded Eschelon's expedite request for the  
6 named customer in the complaint, and which Qwest rejected pending receipt of an executed  
7 expedites amendment. Eschelon could have contested Qwest's requirement that it sign an  
8 amendment after Qwest's denial of the expedite request submitted by Eschelon on January 13,  
9 2006 – or after denial of the second request in January, the third . . . or the twelfth. Instead,  
10 Eschelon waited until this particular customer, a healthcare facility for the disabled, was in  
11 distress to again request an expedite, to begin a finger-pointing campaign against Qwest, and to  
12 file this Complaint.

13         15. Qwest denies this allegation as inappropriate because the ICA is fully consistent  
14 with the expedite process adopted in the Commission-approved CMP. Qwest admits that the  
15 expedite process adopted in the CMP required the parties to execute a short amendment to their  
16 interconnection agreement. Hundreds of CLECs did so; only Eschelon refused.

17         16. Qwest denies this allegation as written. Qwest admits that it previously expedited  
18 orders for unbundled loops on an expedited basis for Eschelon pursuant to the expedite process  
19 then in effect, which process was also created in the Commission-approved Change Management  
20 Process. Qwest avers that the Commission-approved Change Management Process is recognized  
21 by the industry as the vehicle by which processes that underlie interconnection agreements are  
22 created and modified. Eschelon's active participation in the CMP, and its course of conduct and  
23 dealings generally, bind Eschelon to the processes created in CMP. The former expedite process  
24 approved by the CMP did not have rates associated with expediting orders for unbundled loops.  
25 The expedite process adopted in the Commission-approved CMP process in July 2005 contained  
26 a rate of \$200 per day. Such a payment is fully consistent with the parties' ICA, which states that

1 when Eschelon “requests a due date earlier than the standard due date interval, then expedite  
2 charges may apply.” ICA at Att. 5, §3.2.4.2.1. Thus, the ICA specifically contemplates that  
3 Eschelon will pay a fee to expedite orders for unbundled loops. This contractual provision is  
4 inconsistent with Eschelon’s position that it should obtain expedites for free.

5 17-18. Qwest denies these allegations. Qwest’s expedite process is non-discriminatory.  
6 Eschelon is simply wrong in its allegations that the CMP-approved process somehow  
7 discriminates. If anything, Eschelon’s proposal to require Qwest to expedite orders for free for it  
8 – when every other CLEC must pay \$200 for an expedite – would be discriminatory.

9  
10 **III. QWEST’S EXPEDITE PROCESS IS FULLY CONSISTENT WITH THE**  
11 **PARTIES’ ICA.**

12  
13 19. Qwest denies this allegation. As set forth above, the expedite process adopted in  
14 the Commission-approved CMP is fully consistent with the ICA.

15 20. Qwest denies this allegation. The ICA specifically gives Qwest the right to reject  
16 a request to expedite an order. Thus, Eschelon is complaining about Qwest conduct that is fully  
17 authorized by the ICA.

18 21. Qwest does not need to respond to legal allegations as the law speaks for itself.  
19 Thus, Qwest need not respond to this allegation; however, to the extent a response is required,  
20 Qwest denies the allegation.

21  
22 **IV. ESCHELON KNOWINGLY PUT ITS CUSTOMERS AT RISK BY REFUSING TO**  
23 **OPT INTO THE EXPEDITE PROCESS ADOPTED IN THE COMMISSION-APPROVED**  
24 **CHANGE MANAGEMENT PROCESS.**

25  
26 22. Qwest denies this allegation. Eschelon’s refusal to recognize or otherwise react to

1 the expedite process adopted in the Commission-approved CMP has harmed its customers and  
2 resulted in this needless complaint. Qwest admits that one of Eschelon's customers in Arizona is  
3 the facility providing services to disabled persons (hereinafter "the Center").

4 23. Qwest denies this allegation as it does not have sufficient facts necessary to admit  
5 or deny this allegation.

6 24. Qwest denies this allegation as it does not have sufficient facts necessary to admit  
7 or deny this allegation.

8 25. Qwest denies this allegation as it does not have sufficient facts necessary to admit  
9 or deny this allegation.

10 26. Qwest admits that Eschelon directed Qwest to disconnect a DS1 Capable Loop  
11 serving the Center. Qwest sent Eschelon multiple advance notices before disconnecting the DS1  
12 Capable Loop, notices that Eschelon apparently ignored. On March 15, 2006, Qwest disconnected  
13 the loop per Eschelon's request.

14 27. Qwest denies that "disconnects in error are not unique." Qwest expects  
15 telecommunications carriers to utilize due care to ensure that disconnects in error do not occur,  
16 especially when the phone service is being provided to customers such as the Center. Eschelon  
17 apparently does not have sufficient internal processes to protect its own customers from  
18 inappropriate disconnects.

19 28-31. Qwest admits that Eschelon directed Qwest to disconnect a DS1 Capable Loop  
20 serving the Center. Qwest sent Eschelon multiple advance notices before disconnecting the DS1  
21 Capable Loop, notices that Eschelon apparently ignored. On March 15, 2006, Qwest disconnected  
22 the loop per Eschelon's request. At this point, it was improper for Eschelon to submit a "trouble  
23 ticket" to "repair" a circuit that Eschelon had asked Qwest to disconnect. There was no circuit to  
24 repair because it had been disconnected. Eschelon had an obligation to submit an order for a new  
25 circuit. Qwest denies the remainder of these allegations.

26 32. Qwest admits that the standard interval for repairing a DS1 Capable Loop is 4

1 hours. Qwest also admits that the standard interval for installing a DS1 Capable Loop, as approved  
2 by the Commission, is 5 days. While these intervals are different, repair is only available when a  
3 circuit is in service. Once a circuit is disconnected (here, at Eschelon's request), repair is not  
4 available.

5       33. Qwest admits that Eschelon's complete lack of due care, which was exhibited by  
6 submitting an order to disconnect the DS1 Capable Loop at the Center and ignoring multiple  
7 advance notices of the disconnection, put Eschelon in a position of having to order a new high  
8 capacity loop. On Friday, March 17, 2006, Eschelon submitted an order for a new DS1 Capable  
9 Loop, but failed to check the box on the LSR to expedite the order. Instead, Eschelon escalated the  
10 March 17 order and asked that it be expedited and service delivered on Monday March 20, 2006.  
11 In conformance with the parties' ICA, Qwest immediately informed Eschelon that it would not  
12 expedite the order. Qwest also reminded Eschelon of the expedite process adopted in the  
13 Commission-approved CMP. Eschelon could have opted into the process in a matter of moments,  
14 but instead elected to leave its customer without service.

15       34-35. Qwest denies these allegations.

16       36. Qwest denies this allegation. Eschelon's lack of due care is what put the Center out  
17 of service in the first instance. Moreover, Eschelon claims Qwest's conduct left the Center "out of  
18 service for a delayed period of time" when, in reality, Qwest provisioned a circuit for the Center on  
19 March 20, the very day Eschelon designated in its original order for an unbundled loop. Finally,  
20 Eschelon claims it "had" to order a tariffed service. In reality, Eschelon's refusal to opt into the  
21 CMP-approved expedite process and thereby agree to pay Qwest a fee to expedite orders –  
22 something specifically authorized by the parties' ICA – is what left Eschelon unable to obtain  
23 orders for unbundled loops on an expedited basis.

24       37-40. Qwest denies these allegations.

25       41. Qwest denies this allegation. Eschelon's lack of due care is what put the Center out  
26 of service in the first instance. Moreover, Eschelon claims Qwest's conduct left the Center out of

1 service when, in reality, Qwest provisioned a circuit for the Center on March 20, the very date  
2 Eschelon designated in its order for the unbundled loop.

3 42. Qwest denies that its conduct violated the terms of the ICA. To the contrary, Qwest  
4 avers that its conduct and the expedite process adopted in the Commission-approved CMP is  
5 completely consistent with the parties' ICA. Qwest vehemently denies that the expedite process  
6 adopted in the Commission-approved CMP denies CLECs a meaningful opportunity to compete;  
7 indeed, hundreds of CLECs opting into and using this process belies this assertion.

8  
9 **AFFIRMATIVE DEFENSES**

- 10  
11 1. The plain language of the ICA renders Eschelon's Complaint groundless;  
12 2. The course of conduct and dealings between the parties evidence that processes  
13 adopted in the Commission-approved Change Management Process are binding on  
14 the parties;  
15 3. Eschelon's unclean hands undermine Eschelon's Complaint;  
16 4. FCC and Commission decisions approving the Change Management Process  
17 undermine Eschelon's Complaint;  
18 5. Eschelon's failure to utilize the administrative remedies and processes in the  
19 Change Management Process to challenge the expedite process adopted by the  
20 CMP constitutes a waiver by Eschelon of the very claims it has brought in its  
21 Complaint;  
22 6. Eschelon failed to exhaust administrative remedies;  
23 7. Eschelon's use of the expedite process developed at earlier times in the  
24 Commission-approved Change Management Process estops Eschelon from  
25 complaining about the CMP modifying that process;  
26 8. Eschelon's reliance upon the Commission-approved CMP for other processes

estops Eschelon from arguing that the Commission-approved CMP and the processes that emanate there from are not binding on the parties;

9. Eschelon was involved in the Qwest 271 and Change Management processes in Arizona and, therefore, is collaterally estopped from challenging the propriety of the Commission-approved Change Management Process; and

10. Eschelon has failed to state claims upon which relief can be granted.

## PRAAYER FOR RELIEF

WHEREFORE, Qwest respectfully requests that the Arizona Corporation Commission deny any relief requested by Eschelon, and in addition asks the Commission to:

A. Find Eschelon's failure to recognize the processes adopted in the Commission-approved Change Management Process was inappropriate as a matter of law;

B. Find Qwest's process (as adopted in the Commission-approved CMP) for expediting orders for unbundled loops is fully consistent with the parties' Interconnection Agreement;

C. Provide all other relief deemed just and proper.



1 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of May, 2006.

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4 

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21 Attorneys for Qwest Corporation

1 ORIGINAL and 13 copies hand-delivered  
2 for filing this 12th day of May, 2006, to:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 Copy of the foregoing hand-delivered/mailed/emailed  
8 this 12th day of May, 2006 to:

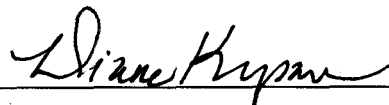
9 The Honorable Lyn Farmer  
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